

1 JOSEPH W. COTCHETT (36324)
2 jcotchett@cpmlegal.com
3 MARK C. MOLUMPHY (168009)
4 mmolumphy@cpmlegal.com
5 MATTHEW K. EDLING (250940)
6 medling@cpmlegal.com
7 JENNIFER R. CRUTCHFIELD (275343)
8 jcrutchfield@cpmlegal.com
9 **COTCHETT, PITRE & McCARTHY, LLP**
10 840 Malcolm Road, Suite 200
11 Burlingame, CA 94010
12 Telephone: (650) 697-6000
13 Facsimile: (650) 697-0577

14 *Lead Counsel for Plaintiff Stanley Morrical,
15 derivatively on behalf of Hewlett-Packard Company*

16 **UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA**

18 IN RE HEWLETT-PACKARD COMPANY
19 SHAREHOLDER DERIVATIVE LITIGATION

20 THIS DOCUMENT RELATES TO:

21 ALL ACTIONS

22 **Master File NO. C-12-6003-CRB**

23 **LEAD PLAINTIFF'S RESPONSE TO
24 RODNEY COOK'S *EX PARTE*
25 APPLICATION TO EXPEDITE
26 SCHEDULE ON MOTION TO
27 INTERVENE**

28 Dept.: Courtroom 6, 17th Floor
Hon. Charles R. Breyer

1 On Thursday, August 14, 2014, Rodney Cook and his counsel, The Weiser Law Firm
 2 (Weiser), filed an *ex parte* application asking this Court to hear his Motion to Intervene to
 3 Remove Lead Counsel (Doc. 172) on August 25, 2014, at the same time as Lead Plaintiff's
 4 Motion for Preliminary Approval of Derivative Settlement relating to Hewlett-Packard
 5 Company's (HP) acquisition of Autonomy (Doc. 149).

6 As brief background, rather than participate in these federal proceedings, Cook filed a
 7 separate derivative action in Delaware state court. On July 22, 2014, the Delaware Chancery
 8 Court **denied** Cook's motion to expedite proceedings in the Delaware case. Addressing Cook's
 9 argument that the proposed Settlement would unfairly terminate claims, the Chancery Court held
 10 it would not act as Cook's "stalking horse" (the Court's words) and held that Cook needed to
 11 make any objections to the proposed Settlement, whatever they may be, as an objector to the
 12 Settlement in this Court.

13 On August 7, in contravention of the rules of this Court, Cook sent a letter to the Court
 14 stating that he intended to move to intervene in this federal action. He then waited nearly a full
 15 week, until August 13, to file his intervention motion. Nearly two years after the derivative
 16 cases were first filed, and just weeks after his Delaware action was stayed, Cook evidently had
 17 an epiphany that Lead Plaintiff Stanley Morrical and Cotchett, Pitre & McCarthy (Cotchett)
 18 needed to be replaced because (1) Cook "alone" made a pre-suit "books and records" request to
 19 HP and was able to assert stronger claims, and (2) Cotchett has a conflict because it also
 20 represents a class of consumers who purchased inkjet printer cartridges from HP and negotiated a
 21 settlement ***four years ago***.

22 Both claims border on frivolous and will be shown to be without merit. More to the
 23 point, Lead Plaintiff agrees that these issues should be resolved immediately. Thus, putting aside
 24 the procedural defects of Cook's *ex parte* application (which Cook's counsel admits was filed
 25 without even trying to contact Cotchett to stipulate to the proposed relief, in violation of this
 26 Court's Standing Orders; *see* Herkenhoff Decl., ¶4), ***Lead Plaintiff does not object to having***
 27 ***Cook's Motion to Intervene heard on August 25, 2014.***

1 Today, having heard nothing from the Weiser firm, Cotchett contacted their office and
 2 proposed a stipulation to submit to the Court. Specifically, since the primary attorney at Cotchett
 3 preparing a response to Cook's 17-page Motion to Intervene was out of the office on a pre-
 4 arranged vacation trip through Wednesday, August 20, 2014, Cotchett proposed that responses
 5 be filed by Friday, August 22, 2014 – a week from today. Weiser rejected the proposal and
 6 insisted that any briefing schedule allowed for a reply brief, notwithstanding the fact that his
 7 client's ex parte application was the one seeking the "expedited" schedule and he took a week to
 8 put together his Motion to Intervene.

9 Accordingly, Lead Plaintiff Stanley Morrical and Cotchett respectfully request, and
 10 separately submit a Proposed Order providing that, (1) the Motion to Intervene be set for hearing
 11 on August 25, 2014 and (2) that parties have until August 22, 2014 to file any opposition,
 12 without any reply. Lead Plaintiff also fully appreciates the additional burden on the Court and its
 13 staff in having to consider Cook's Motion on shortened time, and will endeavor to file the
 14 opposition as early as possible.

16 Dated: July 16, 2014

/s/ Mark. C. Molumphy

Mark. C. Molumphy

18 **COTCHETT, PITRE & McCARTHY, LLP**
 19 840 Malcolm Road, Suite 200
 20 Burlingame, CA 94010
 21 Telephone: (650) 697-6000
 Facsimile: (650) 697-0577
 medling@cpmlegal.com

22 *Lead Counsel for Plaintiff Stanley Morrical,
 23 derivatively on behalf of Hewlett-Packard Company*